

Overview

Major Statutes and Regulations Administered by the Department of Labor

This *Guide* describes the requirements of each major statute enforced by the Department of Labor (DOL). The various chapters are organized by type of standard (e.g., Wages and Hours of Work; Safety and Health Standards; Health Benefits and Retirement Standards; Other Workplace Standards).

Each chapter discusses (1) which employers or employees are covered by the statute; (2) the statute's basic provisions and requirements; (3) employee rights; (4) how to obtain information and compliance assistance from DOL; (5) penalties or sanctions for non-compliance; and (6) relation of the statute to state, local, and other federal laws.

The chapters contain links to more detailed information, such as the texts of statutes, regulations, and interpretative bulletins, which can be found on DOL agencies' Web sites. To understand their full responsibilities under each statute, users should refer to these more detailed materials.

Please note that other federal agencies besides DOL enforce laws and regulations that affect employers. For example, the Equal Employment Opportunity Commission (www.eeoc.gov) enforces many of the statutes designed to ensure non-discrimination in employment, and the National Labor Relations Board (www.nlr.gov) administers the Taft-Hartley Act regulating employer conduct with regard to employees in a wide range of areas. Please consult these agencies for further information on their requirements.

The Overview is structured to help businesses, particularly new businesses, determine which DOL statutes are most likely to apply to them. The first statutes discussed apply to most employers, followed by those that apply to federal contractors, and finally, by the statutes that apply to specific industries, *i.e.*, agriculture, mining, construction, and transportation.

Other sources of assistance include the following:

- DOL's Compliance Assistance Web page (www.dol.gov/compliance);
- A list of major DOL-enforced statutes (www.dol.gov/compliance/laws/main.htm); and
- Employment Laws Assistance for Workers and Small Businesses (elaws) Advisors (www.dol.gov/elaws) is an interactive system designed to help employers and employees understand and comply with many laws administered by DOL. Each **elaws Advisor** provides information on a specific law or regulation based on the user's particular situation. Of particular interest to new or small businesses is the *FirstStep Employment Law Advisor* (www.dol.gov/elaws/firststep/) that helps employers determine which laws administered by DOL apply to their business or organization.

I. Requirements that Apply to Most Employers

A. Wages and Hours of Work

The Fair Labor Standards Act (FLSA) prescribes minimum wage and overtime pay standards as well as recordkeeping and child labor standards for most private and public employment, including work conducted in the home. The Wage and Hour Division of the Employment Standards Administration (ESA) administers this Act. *Contact your local ESA Wage and Hour Division office for more information* (1-866-4USWAGE or www.dol.gov/esa/contacts/whd/america2.htm).

The minimum wage and overtime provisions of the FLSA require the following from employers of covered employees who are not otherwise exempt:

- As of September 1, 1997, employers must pay covered employees a minimum wage of not less than \$5.15 an hour. Employers may pay employees on a piece-rate basis and, under some circumstances, may consider tips as part of wages.
- Youths under 20 years of age may be paid a minimum wage of not less than \$4.25 an hour during the first 90 consecutive calendar days of employment with an employer. Employers may not displace any employee to hire someone at the youth minimum wage.
- Although the Act does not place a limit on the total hours which may be worked by an employee who is at least 16 years old, it does require that covered employees, unless otherwise exempt, be paid not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek.

In addition, the FLSA sets forth special rules for working out of the home. For example, in certain manufacturing industries, the employer must first obtain a certification permitting homework from ESA's Wage and Hour Division.

As noted above, the FLSA's child labor provisions for nonagricultural work include restrictions on the hours of work and occupations for youths under age 16 and restrictions on employment of 16 and 17 year olds in occupations found to be hazardous by the Department.

Other generally applicable statutes that set workplace standards include:

- Under the Immigration and Nationality Act (INA), foreign workers may work in the United States. ESA's Wage and Hour Division enforces rules pertaining to the employment of nonimmigrant workers in four visa classifications: D-1 (Crewmembers); H-1B and H-1B1 (workers employed in a "specialty occupation" or as fashion models); and H-2A (workers employed in temporary agricultural jobs). Under the INA, employers must verify the identity and employment authorization of all employees, including foreign workers. *Contact your local ESA Wage and Hour Division Office for more information* (1-866-4USWAGE or www.dol.gov/esa/contacts/whd/america2.htm).
- Garnishment of wages by employers is regulated under the Consumer Credit Protection Act. ESA's Wage and Hour Division administers this Act. *Contact your local ESA Wage and Hour Division Office for more information* (1-866-4USWAGE or www.dol.gov/esa/contacts/whd/america2.htm).

B. Safety and Health Standards

The Occupational Safety and Health Act (OSH Act), administered by the Department of Labor's Occupational Safety and Health Administration (OSHA), regulates safety and health conditions in most private industry workplaces (except those in industries, such as transportation and mining, that are regulated under other statutes).

OSHA sets safety and health standards by regulation.

- Safety standards cover hazards such as falls, explosions, fires, and cave-ins, as well as machine and vehicle operation and maintenance, etc.
- Health standards regulate exposure to a variety of health hazards through engineering controls, the use of personal protective equipment (e.g., respirators or hearing protection), and work practices.

Employers covered by the OSH Act are required to maintain safe and healthful workplaces. These employers must become familiar with job safety and health standards applicable to their establishments, comply with the standards, and eliminate hazardous conditions to the extent possible. Employees must comply with all rules and regulations that apply to their own actions and practices.

Where OSHA has not set forth a specific standard, employers are responsible for complying with the OSH Act's "general duty" clause [Section 5(a)(1)], which states that each employer "shall furnish. . . a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

Specific safety and health standards developed by OSHA supersede the more general safety and health regulations originally issued under the Walsh-Healey Act, the McNamara-O'Hara Service Contract Act, the Contract Work Hours and Safety Standards Act, and the Arts and Humanities Act.

States operating under OSHA-approved state plans enforce safety and health standards in their respective states, while OSHA is responsible for enforcement in the remaining states. *Contact your local OSHA office for more information* (1-800-321-OSHA or www.osha.gov/html/RAmap.html).

Another generally applicable statute, the Fair Labor Standards Act (FLSA), prescribes the conditions under which minors (younger than 18) can safely work. These restrictions affect most private and public employment. ESA's Wage and Hour Division administers this Act. *Contact your local ESA Wage and Hour Division Office for more detail* (1-866-4USWAGE or www.dol.gov/esa/contacts/whd/america2.htm).

C. Health Benefits and Retirement Standards

The Employee Retirement Income Security Act (ERISA) governs certain activities of most employers who have pension or welfare benefit plans. This Act preempts many state laws in this area. The Employee Benefits Security Administration (EBSA) administers ERISA. *Contact your local EBSA office for more information* (1-866-444-EBSA or www.dol.gov/ebsa/aboutebsa/org_chart.html#section13).

ERISA covered pension plans must meet a wide range of fiduciary and reporting and disclosure requirements. EBSA's regulations define what constitutes plan assets, what is adequate consideration for the sale of plan assets, and the effects of control by participants over the assets in their plans, among other things.

Under ERISA, welfare benefit plans also must meet a wide range of fiduciary, reporting, and disclosure requirements. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) enacted provisions for disclosure and notification requirements for the continuation of health care. These provisions cover group health plans of employers with 20 or more employees on a typical business day in the previous calendar year. COBRA gives separated participants and beneficiaries an election to maintain coverage under the employer's health plan at their own expense for a limited period of time.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) added several provisions to ERISA which are designed to provide participants and beneficiaries of group health plans with improved portability and continuity of health insurance coverage. These provisions are also designed to improve access to insurance and protect against discrimination on the basis of health status. Moreover, HIPAA requires that health insurance coverage be renewable for small employers in certain circumstances.

The statute also provides an insurance mechanism to protect certain types of retirement benefits by requiring that employers pay annual pension benefit insurance premiums to the Pension Benefit Guaranty Corporation (PBGC) (www.pbgc.gov), which is associated with the Department of Labor. Pension insurance information can be obtained by writing Pension Benefit Guaranty Corporation, P.O. Box 151750, Alexandria, VA 22315-1750 or by calling 1-800-400-7242.

D. Other Workplace Standards

The Family and Medical Leave Act (FMLA) requires employers of 50 or more employees (and all public agencies) to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the birth and care of a child, for placement with the employee of a child for adoption or foster care, or for the serious illness of the employee or an immediate family member. ESA's Wage and Hour Division administers this Act. *Contact your local ESA Wage and Hour Division Office for more information* (1-866-4USWAGE or www.dol.gov/esa/contacts/whd/america2.htm).

Veterans' reemployment rights are protected for National Guard and Reserve members who are called to active duty. The Uniformed Services Employment and Reemployment Rights Act (USERRA) addresses the rights and responsibilities of individuals and their employers, and the Veterans' Employment and Training Service (VETS) administers this Act. *Contact your local VETS office for more information* (1-866-4-USA-DOL or www.dol.gov/vets/aboutvets/contacts/main.htm).

The Worker Adjustment and Retraining Notification Act (WARN) provides for early warning to employees of proposed layoffs or plant closings. The Employment and Training Administration (ETA) can provide information on WARN, but since it does not have administrative or enforcement authority under WARN, it cannot provide specific advice or guidance with respect to individual situations. *Contact your local ETA office for more information* (1-877-US-2JOBS or www.doleta.gov/regions/regoffices/).

The Employee Polygraph Protection Act (EPPA) prohibits most uses of lie detectors by employers on their employees and job applicants. ESA's Wage and Hour Division administers this Act. *Contact your local ESA Wage and Hour Division Office for more detail* (1-866-4USWAGE or www.dol.gov/esa/contacts/whd/america2.htm).

The Labor Management Reporting and Disclosure Act (LMRDA) (also known as the Landrum–Griffin Act) addresses the relationship between a union and its members. It ensures certain basic standards of democracy and fiscal responsibility in labor organizations. ESA's Office of Labor-Management Standards (OLMS) administers this Act. *Contact your local ESA OLMS office for more detail* (1–866–4–USA–DOL or www.dol.gov/esa/contacts/olms/lmskeyp.htm#field_offices).

II. Requirements that Apply to Employers Who Receive Federal Contracts, Grants, or Financial Assistance

Nondiscrimination and affirmative action requirements for federal contractors are set forth under Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veterans' Readjustment Assistance Act (38 USC 4212). These laws prohibit discrimination and require affirmative action with regard to race, color, religion, sex, national origin, and status as a qualified individual with a disability or a protected veteran. ESA's Office of Federal Contract Compliance Programs (OFCCP) administers these laws. *Contact your local ESA OFCCP office for more information* (1–800–397–6251 or www.dol.gov/esa/contacts/ofccp/ofnation2.htm).

Various laws determine wage, hour, and fringe benefit standards for employees of federal contractors. These laws include: the Davis–Bacon and Related Acts (for construction); the Contract Work Hours and Safety Standards Act; the McNamara–O'Hara Service Contract Act (for services); and the Walsh–Healey Public Contracts Act (for manufacturing). ESA's Wage and Hour Division determines the required wage and benefit rates and enforces these statutes. *Contact your local ESA Wage and Hour Division Office for more information* (1–866–4USWAGE or www.dol.gov/esa/contacts/whd/america2.htm).

These Acts also authorize issuance of safety and health standards to covered contractors, unless specific standards issued by the Occupational Safety and Health Administration (OSHA) supersede them. *Contact your local OSHA office for more information* (1–800–321–OSHA or www.osha.gov/html/RAmap.html).

Employers who receive federal grants or financial assistance from the Department of Labor must comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended. Entities that receive federal financial assistance under the Workforce Investment Act of 1998 (WIA) or that run programs and activities that are part of the One-Stop Career Center delivery system are subject to section 188 of the WIA. Information about these requirements can be found on DOL's Equal Employment Opportunity Web page at www.dol.gov/dol/topic/discrimination/index.htm.

E.O. 13201 requires Government contractors to post a notice (the Beck Poster) informing their employees that they have certain rights related to union membership and use of union dues and fees under federal law. *Contact your local ESA OLMS office for more detail* (1–866–4–USA–DOL or www.dol.gov/esa/contacts/olms/lmskeyp.htm).

III. Requirements that Apply to Specific Industries

Many of the laws (e.g., the Occupational Safety and Health Act) described in the preceding sections also apply to businesses in the following industries.

A. Agriculture

Under the authority of the Occupational Safety and Health Act, OSHA has issued a number of safety standards that address such matters as field sanitation, overhead protection for operators of agricultural tractors, grain handling facilities, and guarding of farm field equipment and cotton gins. *Contact your local OSHA office for more detail* (1-800-321-OSHA or www.osha.gov/html/RAmap.html).

The Immigration and Nationality Act (INA) requires that employers wishing to use nonimmigrant workers for temporary agricultural employment under the H-2A visa classification apply to the Employment and Training Administration for a labor certificate showing that there are not sufficient workers in the United States who are able, willing, qualified, and available to do the work, and that employment of such nonimmigrant workers will not adversely affect the wages and working conditions of workers in the United States. Employers of such workers must comply with worker-protection provisions, including wage, transportation, and housing safety standards. ESA's Wage and Hour Division enforces these provisions. *Contact your local ESA Wage and Hour Division Office for more information* (1-866-4USWAGE or www.dol.gov/esa/contacts/whd/america2.htm).

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requires that covered farm labor contractors, agricultural employers, and agricultural associations comply with worker protection provisions applicable to migrant and seasonal agricultural workers whom they recruit, solicit, hire, employ, furnish, or transport or, in the case of migrant agricultural workers, to whom they provide housing. ESA's Wage and Hour Division administers the requirements of MSPA. *Contact your local ESA Wage and Hour Division Office for more information* (1-866-4USWAGE or www.dol.gov/esa/contacts/whd/america2.htm).

The Fair Labor Standards Act (FLSA) contains special child labor regulations that apply to agricultural employment. The regulations administered and enforced by the Wage and Hour Division apply only to those establishments with employees (i.e., they do not apply to family-run and family-operated farms that do not hire outside workers). *Contact your local ESA Wage and Hour Division Office for more information* (1-866-4USWAGE or www.dol.gov/esa/contacts/whd/america2.htm).

In addition, the Employment and Training Administration (ETA) administers several agriculture-specific programs. *Contact your local ETA office for more information* (1-877-US-2JOBS or www.doleta.gov/regions/regoffices/).

Finally, the Environmental Protection Agency (www.epa.gov) issues and enforces several safety and health standards (e.g., with respect to pesticides) that apply to this industry.

B. Mining

The Federal Mine Safety and Health Act of 1977 was enacted to improve working conditions in the nation's mines. This law strengthened an earlier coal mining law and brought metal and nonmetal miners under the same general protections as those afforded coal miners. Its provisions cover all miners and other persons

employed to work on mine property. The Mine Safety and Health Administration (MSHA) administers the Act. *Contact the nearest MSHA office for more detail* (1-866-4-USA-DOL or www.msha.gov/contactmsha/contactmsha.htm).

Under the Act, the operators of mines, with the assistance of their employees, are responsible for ensuring the health and safety of the miners. Each mine must be registered with MSHA. Many mine operators must submit plans to MSHA before beginning operations, and such plans must be followed during mining.

The 1977 Act established mandatory miner training requirements and strengthened health protection measures and gassy mine safety programs. The Act also provided for closure of mines in cases of imminent danger to workers or failure to correct violations within the time allowed, greater involvement of miners and their representatives in processes affecting workers' health, and tougher civil monetary penalties for safety or health violations by mine operators.

MSHA's Coal Mine Safety and Health Division (www.msha.gov/programs/coal.htm) enforces the law and the regulations at underground and surface coal mines. MSHA's Metal and Nonmetal Mine Safety and Health Division (www.msha.gov/programs/metal.htm) enforces federal requirements at noncoal mines (including open pit mines, stone quarries, and sand and gravel operations).

Health and safety regulations developed and enforced by MSHA cover numerous hazards, including those associated with the following:


- Exposure to respirable dust, airborne contaminants, and noise;
- Design, operation and maintenance requirements for mechanical equipment, including mobile equipment;
- Roof falls, and rib and face rolls;
- Flammable, explosive and noxious gases, dust, and smoke;
- Electrical circuits and equipment;
- Fires;
- Hoisting; and
- Access and egress.

The Black Lung Benefits Act (BLBA), part of the Federal Mine Safety and Health Act of 1977, provides for monthly payments and medical treatment to coal miners totally disabled from pneumoconiosis (black lung disease). The Act also provides for payments to certain family members of miners who died from pneumoconiosis or are totally disabled because of it. ESA's Office of Workers' Compensation Programs, Division of Coal Mine Workers' Compensation (DCMWC), administers the Act. *Contact your local DCMWC office for more detail* (1-800-638-7072 or www.dol.gov/esa/contacts/owcp/blcontac.htm).

C. Construction

Several Department of Labor agencies administer programs specifically related to the construction industry:

- Under the Occupational Safety and Health Act, OSHA sets and enforces construction safety and health standards. *Contact your local OSHA office for more information* (1-800-321-OSHA or www.osha.gov/html/RAmap.html).

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- Davis–Bacon and Related Acts require most contractors and subcontractors on federally assisted contracts in excess of \$2,000 to pay prevailing wage rates and fringe benefits, as determined by the Secretary of Labor through ESA’s Wage and Hour Division. *Contact your local ESA Wage and Hour Division Office for more information* (1–866–4USWAGE or www.dol.gov/esa/contacts/whd/america2.htm).
 - Under Executive Order 11246, ESA’s OFCCP has issued specific regulations on nondiscrimination and affirmative action requirements for federal construction contractors and subcontractors. *Contact your local ESA OFCCP office for more information* (1–800–397–6251 or www.dol.gov/esa/contacts/ofccp/ofnaton2.htm).
 - The “Anti-Kickback” section of the Copeland Act applies to all contractors and subcontractors performing on any federally funded or assisted contract for the construction or repair of any public building or public work, except contracts for which the only federal assistance is a loan guarantee. This provision precludes a contractor or subcontractor from in any manner inducing an employee to give up any part of the compensation to which he or she is entitled. *Contact your local ESA Wage and Hour Division Office for more detail* (1–866–4USWAGE or www.dol.gov/esa/contacts/whd/america2.htm).

D. Transportation

Under the Occupational Safety and Health Act, OSHA issues and enforces standards for longshore work and the maritime industry. *Contact your local OSHA office for more information* (1–800–321–OSHA or www.osha.gov/html/RAmap.html). However, agencies outside of the Department of Labor administer many other laws affecting the transportation industry. For example, the Department of Transportation and the Railway Retirement Board primarily administer the Railway Labor Act.